

Supreme Court, U. S.
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IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1976

No. 76-1681

OTIS EDWARD GOLDEN,

Appellant,

v.

THE STATE OF CALIFORNIA,

Appellee.

On Appeal from the California Court of Appeal
Third Appellate District

MOTION TO DISMISS OR AFFIRM

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Pursuant to Rule 16 of the Revised Rules of the Supreme Court of the United States, appellee hereby moves to dismiss the appeal, or, in the alternative, to affirm the judgment of the Court of Appeal, Third Appellate District, State of California, on the ground that the question presented is so unsubstantial as not to warrant further argument or consideration.

STATEMENT

This is a direct appeal from the January 7, 1977, ruling of the Court of Appeal, Third Appellate District, State

of California, denying appellant's application for a writ of habeas corpus on the grounds that he is not entitled to be released from custody maintained by the Sacramento County Sheriff pursuant to a Governor's warrant of arrest and rendition issued in favor of the State of Washington.

Appellant is a fugitive from the State of Washington, where he is charged with the crime of carnal knowledge. When appellant failed to appear for trial in that state, a Washington court issued a bench warrant for his arrest. Thereafter, appellant was located in the County of Sacramento, California, and the Governor of Washington submitted a formal demand for his arrest and rendition. On February 18, 1976, Governor Brown of California complied with that demand and issued a warrant. Appellant was arraigned on that warrant on March 17, 1976, and, after indicating that he wished to file a petition for writ of habeas corpus, was remanded to the custody of the sheriff.

Through his attorney, appellant proceeded to file petitions for writs of habeas corpus in the Sacramento County Superior Court and in the Court of Appeal. In both courts, he claimed, as he does now, that this Court's decision in *Gerstein v. Pugh*, 420 U.S. 103 (1975), mandates a judicial finding of probable cause on the issue of guilt before he can be remanded to Washington pursuant to the Governor's warrant. In denying appellant's petition, the Court of Appeal held that the interstate rendition of fugitives is a summary executive process which is but one step in the arrest of an

individual and that, under the Constitution and statutes, an inquiry into the guilt or innocence of the fugitive by officials of the asylum state is absolutely prohibited. The court noted that the protection against arbitrary arrest and rendition lies in the petition for writ of habeas corpus and the statutory guarantee that every fugitive has a right to pursue such a writ if he desires.

Following the appellate court's ruling appellant sought review in the California Supreme Court, which denied a hearing on March 3, 1977. On March 28, 1977, appellant filed in the Court of Appeal his notice of appeal to this Court pursuant to Title 28, United States Code, section 1257 (2).

ARGUMENT

The decision of the California Court of Appeal is clearly correct. Interstate rendition is governed essentially by the federal Constitution and implementing statutes. Article IV, Section 2, Clause 2 of the Constitution provides:

"A person charged in any State with treason, felony, or other crime, who shall flee from justice, and be found in another State, shall on demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime."

Congress has implemented that provision in what is now Title 18, United States Code, section 3182:

"Whenever the executive authority of any State or Territory demands any person as a fugitive from justice, of the executive authority of any State,

District or Territory to which such person has fled, and produces a copy of an indictment found or an affidavit made before a magistrate of any State or Territory, charging the person demanded with having committed treason, felony, or other crime, certified as authentic by the governor or chief magistrate of the State or Territory from whence the person so charged has fled, the executive authority of the State, District or Territory to which such person has fled shall cause him to be arrested and secured, and notify the executive authority making such demand, or the agent of such authority appointed to receive the fugitive, and shall cause the fugitive to be delivered to such agent when he shall appear. If no such agent appears within thirty days from the time of the arrest, the prisoner may be discharged."

This Court has made it abundantly clear that interstate "extradition" involves a "summary executive proceeding" in which the judiciary plays a very limited role. In *Biddinger v. Commissioner of Police*, 245 U.S. 128, 135 (1917), the court noted that habeas corpus is the means for judicial review of a rendition proceeding and said:

"This much, however, the decisions of this court make clear; that the proceeding is a summary one, to be kept within narrow bounds, not less for the protection of the liberty of the citizen than in the public interest; that when the extradition papers required by the statute are in the proper form the only evidence sanctioned by this court as admissible on such a hearing is such as tends to prove that the accused was not in the demanding State at the time the crime is alleged to have been committed; and,

frequently and emphatically, that defenses cannot be entertained on such a hearing, but must be referred for investigation to the trial of the case in the courts of the demanding State."

This Court has repeatedly said that when the Governor issues his warrant, custody under the authority of that warrant is presumed valid and justified, unless and until overcome by convincing evidence presented by the alleged fugitive. E.g., *South Carolina v. Bailey*, 289 U.S. 412, 422 (1932); *Marbles v. Creecy*, 215 U.S. 63, 68 (1909); *Illinois ex rel. McNichols v. Pease*, 207 U.S. 100, 109 (1907); *Muncey v. Clough*, 196 U.S. 364, 375 (1904).

Clearly, the federal Constitution and statutes do not authorize the States to inquire into the guilt or innocence of a fugitive and, just as clearly, the decisions of this Court expressly preclude such an inquiry. Appellant seeks to circumvent these well established precedents, based upon legitimate governmental interests of comity in transactions between states and of efficiency in bringing interstate fugitives to justice, by arguing that this Court's decision in *Gerstein v. Pugh*, *supra*, impliedly overruled this line of authority.

Gerstein v. Pugh is distinguishable for several reasons. First, it did not involve interstate rendition. It involved a situation where a Florida prosecutor filed an information charging a defendant with various offenses. A warrant was issued and an arrest made. Bail was denied and, under Florida law, there was no right to a preliminary examination or other judicial review for at least thirty days. The court held that "the Fourth Amendment requires a judicial determination of

probable cause as a prerequisite to *extended restraint of liberty following arrest.*" (Emphasis added.) *Gerstein v. Pugh, supra*, 420 U.S. at 114.

Other than the fact that *Gerstein* did not involve interstate rendition, there are at least two other substantial reasons why *Gerstein* does not apply to rendition proceedings in an asylum state. First, *Gerstein* does not require a judicial probable cause determination until after arrest. As this Court correctly noted in *Matter of Straus*, 197 U.S. 324, 332-333 (1905), extradition is only a preliminary step in the arrest of an individual. The preliminary process is not completed until the defendant is actually returned to the demanding state and is brought before the court having jurisdiction to try the offense.

Second, prolonged detention under a Governor's rendition warrant is neither contemplated, necessary or desirable. As already noted, interstate rendition is intended to be a summary executive process involving the prompt arrest and delivery of fugitives from justice. Unlike the defendant described in *Gerstein*, a fugitive has a statutory right to seek immediate judicial review of the Governor's decision that he should be extradited to another state, but the focus of such an inquiry is upon the fugitive status of the accused and the sufficiency of the papers. It is not upon the substantive crime. The determination of the validity of the substantive charge is for the courts of the demanding state, for it is only those courts which are competent to interpret and apply the laws of that state. Within the context of interstate

extradition, it is clear that the right of a fugitive to seek judicial review in habeas corpus proceedings is an adequate protection against arbitrary arrest and rendition.¹ For these reasons, it is apparent that neither the rationale of *Gerstein*, nor the case itself, presents a reason for overturning well established authority.

Although the cases of *Kirkland v. Preston*, 385 F.2d 670 (D.C. Cir. 1967) and *Ierardi v. Gunter*, 528 F.2d 929 (1st Cir. 1976) would appear to sanction an inquiry into guilt by the asylum state, the number of jurisdictions which adopt the same view is small. While appellee submits that those jurisdictions have misinterpreted the relationship between the Fourth Amendment and the extradition clause of the Constitution, the conflict is of minor significance and does not require resolution by this Court.

For the foregoing reasons, appellee submits that the California courts have properly applied well established constitutional provisions and case law and that the question raised by the appellant is not substantial. It is therefore requested that this Court affirm the decision

¹ It must be remembered that a Governor has no authority to order the arrest and rendition of a fugitive unless he is presented with a legally sufficient demand for extradition. *Compton v. Alabama*, 214 U.S. 1, 6 (1908). Before the Governor can issue a warrant, he must determine that the wanted individual is a fugitive from justice, that he is substantially charged with a crime in the demanding state, and that the papers are in proper form. *Illinois ex rel. McNichols v. Pease, supra*, 207 U.S. at 108-109. Thus, habeas corpus review is not the fugitive's only protection against arbitrary arrest and rendition; the Governor of the state in which he is found must, in every case, determine that arrest and rendition is proper before he can issue the warrant.

or dismiss the appeal.

Respectfully submitted,

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